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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 08-13555 (JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

November 30, 2011
10:01 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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UNCONTESTED MATTER re Debtors' One Hundred Eighty-Sixth Omnibus
Objection to Claims (Misclassified Claims)

UNCONTESTED MATTER re Debtors' One Hundred Eighty-Seventh
Omnibus Objection to Claims (Misclassified Claims)

UNCONTESTED MATTER re Debtors' One Hundred Eighty-Fourth
Omnibus Objection to Claims (Claims of Westernbank Puerto Rico)

UNCONTESTED MATTER re Debtors' Two Hundred Thirteenth Omnibus
Objection to Claims (To Disallow and Expunge Certain Filed
Proofs of Claim)

UNCONTESTED MATTER re Debtors' Two Hundred Fourteenth Omnibus
Objection (To Disallow and Expunge Certain Filed Proofs of
Claim)

UNCONTESTED MATTER re Debtors' Two Hundred Fifteenth Omnibus
Objection (To Disallow and Expunge Certain Filed Proofs of
Claim)

UNCONTESTED MATTER re Debtors' Two Hundred Sixteenth Omnibus
Objection (To Disallow and Expunge Certain Filed Proofs of
Claim)

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UNCONTESTED MATTER re Debtors' Two Hundred Seventeenth Omnibus
Objection (To Disallow and Expunge Certain Filed Proofs of
Claim)

UNCONTESTED MATTER re Debtors' Two Hundred Eighteenth Omnibus
Objection (To Disallow and Expunge Certain Filed Proofs of
Claim)

UNCONTESTED MATTER re Debtors' Objection to the Claim of
Wilmington Trust Company as Indenture Trustee (Claim No. 10082)

CONTESTED MATTER re Debtors' Ninety-Second Omnibus Objection to
Claims (No Blocking Number LPS Claims)

CONTESTED MATTER re Debtors' One Hundred Twentieth Omnibus
Objection to Claims (No Blocking Number LPS Claims)

CONTESTED MATTER re Debtors' One Hundred Seventieth Omnibus
Objection to Claims (No Blocking Number LPS Claims)

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Be seated. Good morning.

MS. ECKOLS: Good morning, Your Honor. Erin Eckols with Weil Gotshal for the debtors. Before we started today's agenda, I wanted to discuss one brief housekeeping matter. We discovered that there was a clerical error with respect to certain orders attached to the certificate of no objection that was filed yesterday such that, in certain instances, the incorrect orders were actually attached. The correct orders are the proposed orders that were attached to the omnis as originally filed. And the only changes to those are the nonsubstantive changes that were actually referenced in the CNO. And we intend to send down the corrected orders later today.

THE COURT: Okay.

MS. ECKOLS: Thank you. And I'm going to turn the podium over to Mark Bernstein.

MR. BERNSTEIN: Good morning, Your Honor. Mark Bernstein from Weil on behalf of Lehman Brothers Holdings Inc. and its affiliated debtors. We have a number of items on the agenda today, about six or seven uncontested items and then a few contested items as well. So we'll start with the contested (sic) items and we'll take each item in order.

THE COURT: Did you say you're starting with the contested?

1 MR. BERNSTEIN: I'm sorry. The uncontested.

2 Uncontested.

3 THE COURT: That's the right order.

4 MR. BERNSTEIN: Item number 1 is debtors' 186th
5 omnibus objection to claims and item number 2 is 187th omnibus
6 objection to claims. These are both identical objections.
7 They both seek to reclassify certain claims that were filed
8 against the debtors as secured claims -- to be classified
9 secured claims as unsecured claims. These objections have been
10 heard before and these are carryover items. Certain parties
11 have requested extensions of their objection deadlines. They
12 either have not objected or have agreed to language in a
13 revised order, which I can hand up to Your Honor, which is the
14 same language we included in prior orders which preserves their
15 right of setoff notwithstanding that their claim is being
16 reclassified as unsecured to the extent they do assert any
17 right in the future.

18 THE COURT: Why don't you hand that up?

19 MR. BERNSTEIN: Sure.

20 (Pause)

21 THE COURT: Okay. Thank you.

22 MR. BERNSTEIN: Point you to the language at the
23 bottom of page 2. That says "This order has no res judicata,
24 estoppel or other effect on any valid rights of setoff, netting
25 and a recoupment in connection with any claims listed on

1 Exhibit 1 annexed hereto."

2 THE COURT: Okay.

3 MR. BERNSTEIN: Based on the inclusion of this
4 language, these two omnibus objections are going forward
5 uncontested and we respectfully Your Honor grant the 186th and
6 187th omnibus objection.

7 THE COURT: Those are granted on an uncontested basis.

8 MR. BERNSTEIN: Thank you, Your Honor. The next item
9 is the debtors' 184th omnibus objection to claims. This
10 relates to claims filed by the Westernbank of Puerto Rico
11 against each of the debtors in the amount of approximately 139
12 million dollars.

13 The basis for the claim is a repurchase agreement that
14 Westernbank was party to pre-petition with Lehman Brothers Inc.
15 Westernbank asserted in its proof of claim that certain of the
16 securities that were subject to that repurchase agreement were
17 transferred to Barclays as part of the overall sale, the North
18 American capital markets business back in September of '08 and
19 that certain proceeds of the sale may have been allocated to
20 certain of the debtors.

21 After we filed this objection, we received a call from
22 counsel to the FDIC who apparently had been appointed as a
23 receiver for Westernbank over the summer and the spring of this
24 year. Following certain -- an investigation or a review of the
25 claim by the FDIC and its counsel, they have determined not to

1 prosecute the claim and are willing to let the objection go
2 through unopposed to the inclusion of certain language in this
3 order as well.

4 The language -- I have a revised order I can hand up
5 to Your Honor and point you to the language as well.

6 THE COURT: Okay.

7 MR. BERNSTEIN: The revised language indicates that
8 the FDIC was appointed by a receiver of Westernbank in April of
9 this year and that Westernbank is reserving all rights to
10 pursue claims against LBI and any other claims against the
11 debtors. And those claims are not affected by this order in
12 any way.

13 Based on the inclusion of this language, Westernbank
14 does not object to this objection -- or did not respond to this
15 objection and consents to have their claims disallowed. As a
16 result, we request Your Honor respectfully grant the omnibus
17 objection 184.

18 THE COURT: Based on those representations, the
19 objection is granted.

20 MR. BERNSTEIN: Thank you, Your Honor. The next
21 series of omnibus objections relate to claims that were --
22 sorry -- securities that were issued by trust or partnership
23 entities organized in the UK. These trusts and capital
24 partnerships hold subordinated debt securities issued by LBHI
25 and then used the proceeds of those subordinated debt

1 securities to make payments on securities issues themselves by
2 those trusts and partnerships.

3 In omnibus objection 213 to 216, which are each
4 identical, the securities are actually issued by Lehman
5 Brothers UK Capital Funding IV and V. LBHI provided a guaranty
6 of the payments on the securities issued by Capital Funding IV
7 and V. However, LBHI's obligations under that guaranty are
8 subordinated obligations. The guaranty itself provides that
9 the payment on those securities will be paid -- sorry. They
10 payment on the guaranty will rank equal with other preferred
11 stock of LBHI which, in the Lehman Chapter 11 plan, is included
12 in the equity class because there's no expected distribution on
13 those claims.

14 The debtors have also asserted that the guaranty
15 itself has terminated in accordance with its terms which
16 provide that if the issuer itself, these Capital Funding
17 entities, are dissolved then the guaranty automatically
18 terminates. And the issuers dissolve automatically upon the
19 dissolution of their general partner which did happen in this
20 case. So we view the guaranty as having terminated and LBHI
21 not having any liability for this -- for claims based on this
22 guaranty.

23 So we request that all of the claims be expunged based
24 on the grounds of no liability. We did receive a couple calls
25 from certain creditors who indicated that they may dispute the

1 disallowance of their claims on those grounds but did not
2 dispute that the guaranty provided that any claim based on the
3 guaranty is subordinated and they would permit their claim or
4 not object to their claim being reclassified as equity.

5 From the debtors' perspective, it does not make a
6 difference in this case. And we have agreed for those
7 creditors to reclassify their claims as opposed to expunge
8 their claims.

9 THE COURT: Does the order which you seek today
10 include separate treatment in which certain parties have their
11 claims subordinated and other parties have their claims
12 disallowed?

13 MR. BERNSTEIN: It does. It provides that all -- it
14 provides separate paragraphs and separate schedules. And for
15 the most part, claims are being disallowed or we're seeking to
16 have claims disallowed except to the extent that parties have
17 contacted us and it's, I think, maybe two or three parties.
18 And we do have a separate schedule for those claims.

19 THE COURT: But the substantive effect is the same
20 from your perspective because the subordination of a claim to
21 equity is the same as no distribution right.

22 MR. BERNSTEIN: Correct.

23 THE COURT: Okay.

24 MR. BERNSTEIN: So based on that, we will submit
25 orders and respectfully request Your Honor grant the 213th,

1 214th, 215th and 216th omnibus objection disallowing certain
2 claims and reclassifying certain other claims as provided for
3 in the order.

4 THE COURT: I'm prepared to do that but there's
5 someone in the front row who was standing up and then sat down.
6 And I'm not sure if it relates to this.

7 MR. ROLDAN: Yes, Your Honor.

8 THE COURT: Please come forward.

9 MR. BERNSTEIN: I would just say we are only going
10 forward on an uncontested basis. To the extent we have
11 received responses, we have adjourned those to a later date.

12 THE COURT: All right.

13 MR. ROLDAN: Good morning, Your Honor. I'm Vincent
14 Roldan at DLA Piper, counsel to certain creditors. I was in
15 contact with Mr. Bernstein last night by e-mail. I was one of
16 the people that he made reference to. What he said was correct
17 but I wanted to just clarify that certain of our -- certain of
18 my clients' claims were based not only upon subordinated
19 guaranties issued by the Lehman entity but also on bonds issued
20 directly by Lehman. So Mr. Bernstein has included language
21 which should clarify that my clients' claims are only being
22 partially reclassified and that the order only applies to that
23 portion of the claim which relates to the bonds based on the
24 subordinated guaranties and it has no effect on the other
25 bonds. And I believe that's what the order says and I believe

1 that's the intent, Your Honor.

2 THE COURT: Okay.

3 MR. ROLDAN: Thank you.

4 THE COURT: Thanks for that clarification.

5 MR. BERNSTEIN: I agree with that representation. The
6 order will be clear that this order only relates to the ISNs
7 and the securities with those ISNs issued by these Capital
8 trusts. And any other securities or other claims on the proofs
9 of claim are not affected by this order in any way.

10 THE COURT: Fine. With the statements of counsel
11 incorporated in the record, each of the objections will be
12 granted.

13 MR. BERNSTEIN: Thank you, Your Honor. The next item
14 on the agenda is objection number 217 omnibus objection. This
15 is a similar structure to the ones that we were just discussing
16 where there was a capital trust established to hold
17 subordinated notes issued by LBHI and then that capital trust
18 itself issued securities to third party investors. However, in
19 this case, there was no guaranty issued by LBHI in favor of
20 these notes. There was a guaranty issued by Lehman Brothers
21 Holdings PLC which is a nondebtor in these cases. It is an
22 affiliate but it is an entity in the UK for which LBHI is not
23 responsible. So from the debtors' perspective, there is no
24 liability at all for claims based on guaranties of the
25 securities issued by Lehman Brothers Capital Funding III which

1 are included on omnibus objection 217.

2 We will include similar language previously referenced
3 to make clear that these objections only relate to the
4 securities issued by Capital Funding III. And to the extent
5 there are securities or claims on those proof of claims, they
6 are not affected by this order.

7 Based on that, I would request Your Honor please grant
8 the 217th omnibus objection to claims.

9 THE COURT: The 217th omnibus objection is granted on
10 an uncontested basis.

11 MR. BERNSTEIN: Thank you, Your Honor. The omnibus
12 objection 218 again is a similar structure to what we've been
13 discussing. The issuers of these securities are Lehman
14 Brothers Holdings Capital Trust III through VI. And they also
15 hold subordinated notes issued by LBHI.

16 The LBHI guaranty of these notes is not a payment
17 guaranty as it was for the previous notes. In this case, it
18 was only a performance guaranty so that if these trusts
19 actually received proceeds on their subordinated notes and did
20 not pass them through to the security holders then LBHI did
21 have an obligation to make a payment to those security holders.
22 No one has asserted that that is the case here that these
23 trusts are holding cash that has not been passed through. They
24 are seeking to collect on a payment guaranty from LBHI which
25 does not exist.

1 So based on those facts, the debtors do not believe
2 there's any liability for these guaranties and respectfully
3 Your Honor disallow these claims and grant the 218th omnibus
4 objection to claims.

5 THE COURT: The 218th omnibus objection is granted.

6 MR. BERNSTEIN: Thank you, Your Honor. Moving on from
7 these type structures, the next objection on the agenda is an
8 objection to seek to reduce and allow the claims of Wilmington
9 Trust Company. Wilmington Trust filed a proof of claim as
10 indenture trustee for hundreds of issuances of debt by LBHI.
11 The claim was filed in an aggregate amount of approximately or
12 up to seventy-three billion dollars which represented the
13 initial issuance amount of all those securities in the
14 aggregate. It did not take into account any repayments that
15 were subsequently made on any of those securities. So based on
16 that, the debtors believe the actual amount owed on those bonds
17 is significantly less than the asserted amount in the proof of
18 claim.

19 The debtors and Wilmington worked cooperatively
20 together to reconcile their books and records and determine
21 what the appropriate amount and the proper amount was on those
22 securities. Many of them were simple plain vanilla debt
23 securities where it was just a matter of determining the
24 accrued interest -- the principal outstanding and the accrued
25 interest through the petition date. The debtors and Wilmington

1 were easily able to reconcile those amounts and agree on what
2 the appropriate claim amount is for those securities.

3 There was also a number of securities included on the
4 proof of claim that are structured securities that are not just
5 tied -- that don't just have an interest rate but are tied to
6 some kind of underlying indice or commodity or other movement
7 of the capital markets. For these securities, the debtors have
8 valued these securities using the structured securities
9 valuation methodologies which they have used for all other
10 structured securities in this case including the ones issued by
11 LBT, LBSN and some of their foreign affiliates.

12 Wilmington has reviewed those methodologies and the
13 valuations of these particular securities and determined that
14 in this case and under these circumstances, the methodologies
15 were a reasonable way to value these securities.

16 Wilmington sent out notices to each of their holders
17 of the proposed reduction of their proof of claim and the
18 specific values of each security. And I understand that they
19 did not receive any objections to the reducing of their claim.
20 Certain parties also contacted the debtors with questions about
21 the reduction of the claim or the amounts for specific bonds.
22 We had various discussions but at the end of the day, there
23 were no objections filed to the reduction of the Wilmington
24 claim.

25 Since the Wilmington -- a portion of the Wilmington

1 claim is based on these structured securities and the -- the
2 valuation of which is not always a precise calculation but
3 there may be room for variability or difference of opinion
4 within a certain range, Wilmington has requested that all
5 holders be deemed to consent to the reduction of the claim and
6 that holders be enjoined from pursuing claims or actions
7 against Wilmington for agreeing to reduce the claim as
8 Wilmington has no economic interest in this claim, they're
9 merely acting as indenture trustee and they don't have express
10 authority in their indenture to take these actions.

11 Based on the fact that holders received notice -- this
12 objection was filed at least thirty or maybe more days before
13 this hearing -- and there were no responses or anyone seeking
14 to challenge the reduction, the debtors believe it is
15 appropriate to grant this objection with all included language
16 in the order.

17 THE COURT: Is anyone here on behalf of Wilmington
18 Trust who can make an argument as to why this is appropriate?

19 MR. BERNSTEIN: Yes. Counsel for Wilmington Trust is
20 present and available to answer your questions.

21 THE COURT: I'd like to hear from counsel for
22 Wilmington Trust 'cause I view this as an unusual extra added
23 attraction.

24 MR. BERNSTEIN: I would just add one thing before
25 counsel for Wilmington Trust steps forward. The language is

1 similar to language that has been included in prior orders
2 where indenture trustees or SPVs in other cases have agreed to
3 settle certain derivative claims based on the fact that, again,
4 like here, they didn't have any economic interest and they were
5 acting on behalf of noteholders.

6 THE COURT: Well, the focus that I have right now --
7 and I'll hear from counsel in a second, is that this is arising
8 in the context of an uncontested objection to the Wilmington
9 Trust claim. And I haven't been presented with a stipulation
10 or background materials to support what you've just said.

11 MR. BERNSTEIN: Understood.

12 THE COURT: Okay.

13 MS. JOHNSTON: Good morning, Your Honor. Susan
14 Johnston from Covington & Burling on behalf of Wilmington
15 Trust. The difficulty that Wilmington Trust faced in working
16 with the debtor to arrive at an agreed claim amount for this
17 claim arises from the fact that the indenture does not
18 authorize the trustee to compromise the amount of the claim.
19 The right to compromise the claim is reserved to the actual
20 noteholders. In this case, we have something like 800
21 different CUSIP numbers. We have hundreds of individual
22 noteholders many of which are retail holders. Some of them are
23 represented -- some of the holders are -- in fact, the large
24 holders in the case have taken positions on the ad hoc
25 committee. But many, many, many others are small retail

1 holders. And I think Your Honor has heard from some of them in
2 other objections in this case. And I think Your Honor was able
3 to form the conclusion that although these people are
4 intelligent capable people, they are not necessarily educated
5 about bankruptcy process and claims objections and that sort of
6 thing.

7 So we are faced with the difficulty that we are not
8 expressly authorized under the indenture to compromise the
9 claim amount. The case law is not particularly helpful in this
10 regard under the facts of this case. Our facts differ from
11 other cases in which indenture trustees have been authorized to
12 modify the terms of payment under the indenture.

13 And the methodology that the debtor has applied to
14 value the structured securities is -- while we have concluded,
15 after considerable analysis and discussion both with the debtor
16 and the committee and the debtor's financial advisors and the
17 committee's financial advisors, reasonable under the
18 circumstances, it is not strictly consistent with the contract
19 terms of the indenture. That is, it does not -- in every
20 single structured security CUSIP, it does not take that note
21 and apply the contract terms to come up with the derived
22 number. And there are reasons why the debtor didn't do that
23 that we accept and we think, under the circumstances, it's
24 reasonable for them not to have done that. But the numbers, in
25 some respects and maybe in all respects, deviate from the

1 actual contract terms. And for the indenture trustee to agree
2 that the claim amount is a fair and reasonable way to resolve
3 this problem, we are concerned it leaves the indenture trustee
4 open to accusations from noteholders down the road that we did
5 not comply with the strict terms of the contract and that we
6 are not strictly authorized under the terms of the indenture to
7 compromise the number. That's why we requested the language in
8 the order that would protect us from any after-the-fact claims.

9 We based the language that we requested, as Mr.
10 Bernstein said, on orders that Your Honor has entered that
11 protected U.S. Bank in similar situations in this case in which
12 they, as indenture trustee, were asked to agree to certain
13 terms and concepts that were inconsistent with the indenture
14 and for which they had no express authority.

15 THE COURT: What is the agreement that has been
16 reached here? As this was set up on the docket, there's an
17 objection to the claim and, at least according to my agenda, no
18 related documents and no responses in respect of that
19 objection. So what's the documentation that will provide for
20 this protection to your client? Is there a stipulation of some
21 sort as to an allowed amount of the claim?

22 MS. JOHNSTON: No, Your Honor. We had a number of
23 discussions with the debtor about the format that this
24 procedure should take. One possibility was a 9019 settlement
25 in which we could have had such a stipulation. The debtor

1 preferred to take this reduced and allowed approach. And I'm
2 not in a position to explain that. I think maybe Mr. Bernstein
3 is in a better position to do that.

4 The underlying process was an extensive negotiation
5 discussion -- analysis. This is one of those examples that
6 Your Honor has pointed to in the past of the tip of the
7 iceberg. There was a huge amount of discussion and negotiation
8 over many, many months analyzing -- I mean, I think Your Honor
9 can see from the -- from the attachments to the motion and the
10 proposed order how many CUSIPs there are and the changes in the
11 numbers. I mean, that is, I guess, Your Honor, some
12 documentation of what you're talking about that shows that, in
13 fact, there were changes in the negotiated amount -- in the
14 claimed amount to the negotiated amounts of these numbers.

15 We've also -- in the record, attached to our proof of
16 claim, which is referred to in the motion and I think could be
17 incorporated in the record of this argument for purposes of
18 today's hearing, our proof of claim to which we attached the
19 indenture which does not contain any language authorizing us to
20 do it. That's part of the evidentiary record, it seems to me,
21 of this hearing -- and the proof of claim background that
22 explains the basis on which we filed the proof of claim and
23 asserted it in the numbers in which we asserted it. So that
24 reflects the facts of the amount of the claim. And then the
25 debtors' reduced and allowed objection reflects the new

1 numbers.

2 If we had not been provided with the relief that the
3 debtor agreed to provide in the order, we would have had to
4 have filed some kind of objection that explained what the
5 debtor has explained and we have explained of the difficulties
6 that Wilmington Trust found itself in when faced with this
7 reduction.

8 I don't know if that is responsive or helpful at all.

9 THE COURT: No. It's certainly illustrative of the
10 documents that are in the record. But from my perspective, I'm
11 hearing this for the first time now. And simply because of the
12 volume of material that I deal with on the claims docket in
13 addition to all the volume of material that relates to the case
14 as a whole, when I see a docket reference that shows an
15 uncontested item, which is this one, with responses received as
16 none and related documents as none, and then I hear a
17 representation that this is not a plain vanilla resolution of
18 an uncontested claim simply on the basis that what's in the
19 objection is accepted as true because parties in interest in a
20 position with notice to respond have not done so, here we're
21 seeking through representations of counsel what amounts to
22 something akin to a hold harmless to Wilmington Trust in which
23 Wilmington Trust is being protected against potential claims of
24 noteholders that probably had no actual notice that you would
25 be seeking such protection today. Did they have notice?

1 MS. JOHNSTON: They did, Your Honor. We provided them
2 with notices through DTC which is the way indenture trustees
3 provide notice to noteholders that we would be seeking exactly
4 this relief.

5 THE COURT: Okay.

6 MS. JOHNSTON: We did actually provide them with --

7 THE COURT: Tell me about --

8 MS. JOHNSTON: We provided them with a series of
9 notices in which --

10 THE COURT: Tell me about those notices.

11 MS. JOHNSTON: Yes, Your Honor. And we could -- we
12 could certainly supplement the record by providing you with
13 copies of all the notices that we provided if that would be
14 helpful. I have them here and I can hand them up although that
15 doesn't help the record; it just helps Your Honor see what we
16 did.

17 THE COURT: Well, tell me about what you did and then
18 we can talk about --

19 MS. JOHNSTON: Okay.

20 THE COURT: -- whether there's a need --

21 MS. JOHNSTON: All right.

22 THE COURT: -- to supplement the record in some way.

23 MS. JOHNSTON: We sent out -- throughout the case,
24 we've sent out a number of notices to the noteholders. On
25 October 15th, 2008, we sent a notice that advised them of the

1 event of default caused by the filing of the petition. And
2 that included all of the CUSIP numbers under the indenture. So
3 it went to DTC and they presumably sent it to all the
4 noteholders. And that was a generic notice.

5 On February 27th, 2009, we sent out a supplemental
6 notice. These are not specifically related to this issue but
7 it establishes a course of providing notice to the noteholders
8 over time.

9 We know that the noteholders got the notices because
10 we've gotten hundreds and hundreds of phone calls in response
11 to them. So we know that the notice provision is effective.

12 THE COURT: Well, here's my very narrow question that
13 I'm looking to have you respond to. Did Wilmington Trust
14 provide the noteholders with a notification that Wilmington
15 Trust, in substance, (a)questioned its authority to compromise
16 claims under the indenture; (b)was acting in good faith in
17 order to compromise those claims and was working actively with
18 the debtors to come up with a compromised number; and (c)by
19 virtue of such activity, expected to be held harmless from any
20 claims that the noteholders might have concerning the conduct
21 of Wilmington Trust in its capacity as indenture trustee.

22 MS. JOHNSTON: Yes, Your Honor. Not necessarily --

23 THE COURT: Tell me how that --

24 MS. JOHNSTON: -- in so many words and not necessarily
25 in one single document, but yes. I believe we did communicate

1 that notice, that kind of information to the noteholders.

2 One of the notices that we sent -- but I need to step
3 back a little bit and say, one of the things that we were
4 concerned about was the various iterations of the debtors'
5 valuation methodology for their structured notes which was
6 issued first not with respect to our notes but with respect to
7 the European notes. And we provided notice to the noteholders
8 of the existence of that valuation methodology which was not,
9 as was the case with our notes although maybe somewhat less so
10 the case with our notes -- did not strictly follow the contract
11 terms and therefore raised the same issues that it raised with
12 our notes. We provided that notice and a reference to that
13 when the plan came out that referred to the disclosure -- to
14 the valuation methodology.

15 We provided notice of the filing of the second amended
16 plan and disclosure statement and the valuation methodology
17 applicable to structured securities on July 26th, 2011. We
18 discussed in that notice the valuation methodology. And I
19 don't have the details. I mean, I can't -- you don't want me
20 to read it to you, but we discussed the plan and the disclosure
21 statement and the valuation methodology in that notice.

22 On August 11th, 2011, we sent out a notice that did
23 explicitly disclose and notify the noteholders of our proposed
24 action and our request for direction with respect to the
25 resolution of the proof of claim. In that notice, we talked

1 specifically with respect to the LBHI structured notes which
2 are the ones that are the tricky ones here with respect to
3 which we need this protection. We referred the noteholders to
4 the disclosure statement that provided information about the
5 valuation methodology. We indicated that the debtors were
6 going to apply the methodology to all of the notes including
7 our notes. We discussed the Court's order of August 10th
8 approving the motion to -- for approval of procedures to
9 determine the allowed amount of claims filed based on
10 structured securities issued or guaranties by the Lehman
11 Brothers Holdings Inc. And we referred to the committee
12 statement that was filed in support of that motion on which
13 Wilmington relied.

14 Wilmington does not have the expertise in-house to
15 analyze the structured security notes and to come up with the
16 right numbers. So Wilmington relied heavily on the committee
17 and its professionals in its scrutiny of the valuation
18 methodology and its working through the process with the
19 debtors to come up with the right approach. And we advised --
20 we told the noteholders about that in this notice.

21 We referred to the provision of the indenture in --
22 pursuant to which "The senior noteholders holding the majority
23 and principle amount of a series of outstanding senior notes
24 have the right to direct the trustee as to the time, method and
25 place of conducting any proceeding for any remedy available to

1 the trustee with respect to that series subject to the
2 conditions set forth therein." And pursuant to Section 603 of
3 the indenture, "The trustee is under no obligation to exercise
4 any rights or powers vested in it at the direction of any
5 senior noteholder unless the trustee is provided reasonable
6 security or indemnity against the costs, expenses and
7 liabilities which might be incurred by the trustee's compliance
8 with any direction."

9 Then we advised them that "FTI had concluded that the
10 pre-petition valuation methods used by LBHI were generally
11 consistent with comparable methods employed by broker-dealers
12 for purposes of valuing securities and their financial
13 statements at the time the general ledger values were
14 determined."

15 And then in bold uppercase language, we said
16 "Accordingly, the trustee presently intends to accept the
17 allowed claim amounts for the LBHI structured notes that are
18 produced by the valuation methodology as set forth on the
19 structured securities list unless directed otherwise in
20 accordance with the terms of the indenture." And then "Any
21 direction must be from holders of a majority and principle
22 amount of the relevant series of outstanding senior notes and
23 include an appropriate indemnity. The trustee will determine,
24 in its sole discretion, whether any such direction and
25 indemnification is effective under the terms and conditions of

1 the indenture."

2 So in this one, we told them what we were planning to
3 do. We did not tell them in this one -- this notice that we
4 were seeking protection. That came --

5 THE COURT: Did you tell them anywhere that you were
6 seeking protection?

7 MS. JOHNSTON: I'm sorry?

8 THE COURT: Did you tell them anywhere that --

9 MS. JOHNSTON: Yes, we did.

10 THE COURT: -- you were seeking protection?

11 MS. JOHNSTON: We told them that in the last -- in the
12 notice that we sent on October 3rd in which we said "The
13 trustee" -- and in bold but not uppercase language -- "The
14 trustee has requested that any order entered in connection with
15 the objection enjoin the holders of the LBHI structured notes
16 from asserting claims against the trustee arising from its
17 negotiation of and consent to the reduction and allowance of
18 the global proof of claim as it relates to the LBHI structured
19 notes."

20 This notice went out on October 3rd. And the deadline
21 for filing responses to the objection was November 14th. So
22 the noteholders had -- I don't know exactly how long it takes
23 DTC to get the notices out. But I would say at least four
24 weeks if not more to review this material and to respond and
25 object. So --

1 THE COURT: And I take it no noteholder contacted
2 Wilmington Trust or its counsel with respect to this request
3 for protection.

4 MS. JOHNSTON: That's correct. We did get, as
5 debtor's counsel got, calls asking about the actual
6 calculations. But we got no communication from any of the
7 noteholders about the request for protection.

8 THE COURT: Okay.

9 MS. JOHNSTON: And I would be very happy to supply all
10 of this in an affidavit if the Court prefers.

11 THE COURT: I think that, for record purposes, it
12 would be desirable, perhaps most desirable for your client,
13 come to think of it, that there be a factual record to support
14 the requested relief. And I think that what makes the most
15 sense is to defer entry of any order with respect to the
16 debtors' now uncontested objection to the Wilmington Trust
17 claim in its capacity as indenture trustee to the next hearing
18 unless that's a problem from a case administration perspective.
19 And I'll hear about that in a moment -- so that the record is
20 supplemented. And we'll then be able to review the actual
21 documents that you've referenced in your presentation to
22 support the entry of any order.

23 MS. JOHNSTON: Yes, Your Honor. I'd be happy to do
24 that. I don't know anything about a case administration --

25 THE COURT: Mr. Bernstein, is there a timing issue

1 with respect to this?

2 MR. BERNSTEIN: There's not a timing issue. The next
3 hearing is December 21st and that's fine. But the majority of
4 the dollars, the reduction of the dollars of the claim, relate
5 to the plain vanilla notes to which the releases and the
6 protection that Wilmington is looking for does not apply. The
7 order specifically only applies that to the structured
8 securities. So perhaps it would be possible to bifurcate the
9 orders. We can have one order, if it would work for Your
10 Honor, entered on the vanilla note which does not have the --
11 any of these protections for Wilmington. It is simply a reduce
12 and allow which there were no responses and it just says that
13 portion of the claim will be reduced and allowed from these
14 dollars, whatever it is, from one dollar amount to another.

15 THE COURT: Were you always planning to have two
16 separate orders?

17 MR. BERNSTEIN: No. But the order -- the language in
18 the order that relates to the protection for Wilmington
19 specifically and expressly provides that it only relates to the
20 reduction of the claims based on structured -- to the portion
21 of the claim based on the structured securities.

22 THE COURT: What's the relative dollar amount involved
23 in the two categories?

24 MR. BERNSTEIN: I don't know. I think maybe
25 Wilmington's counsel can speak to that.

1 MS. JOHNSTON: I can't make a representation about
2 this in which I have absolute confidence. But my recollection
3 is that of the forty-eight billion face amount of the note,
4 about six billion is structured securities. It's a fairly
5 small percentage of the overall amount. Is that --

6 MR. BERNSTEIN: That sounds --

7 MS. JOHNSTON: -- consistent --

8 MR. BERNSTEIN: -- consistent with about what I know
9 as well.

10 MS. JOHNSTON: Yeah.

11 MR. BERNSTEIN: And these are big dollar amounts for
12 the debtors in contemplation of potential confirmation and
13 reserves for distributions. It's not urgent. If we have to go
14 to December 21st, that's fine. But to the extent that we can
15 get the claim significantly reduced before then, I know that
16 would be appreciated by the debtors.

17 THE COURT: Well, if you're prepared to have an order
18 that solely relates to the plain vanilla notes, as you've
19 termed them, and that does not include any reference to
20 Wilmington Trust, that can be entered prior to the December 6th
21 start of confirmation. I would prefer that there be no order
22 entered that makes any reference to the Wilmington Trust issue
23 until we have supplemented the record.

24 MR. BERNSTEIN: That's fine. We can certainly
25 bifurcate the orders that way and the order will not reference

1 Wilmington in any way.

2 THE COURT: Okay. Does anyone else have any comments
3 on this issue which has evolved without a lot of prior notice
4 and at least in terms of a review of the agenda. Does the
5 committee have any comment? Does any other party in interest
6 have any comment?

7 MR. FRIEDMAN: Bradley Scott Friedman on behalf of the
8 official committee of unsecured creditors. Just at the outset,
9 Wilmington Trust Company is a member of the committee. And to
10 the extent that we considered this with particular respect to
11 them, they would have been screened. I think we're fine
12 proceeding in the way that Mr. Bernstein represented. If the
13 Court would like, we could reach out to the committee and see
14 if they would like to file something in support of this course
15 of action as well.

16 THE COURT: I don't need to hear anything more from
17 the committee.

18 MR. FRIEDMAN: Okay. Thank you, Your Honor.

19 THE COURT: Okay. If there are no other comments, the
20 objection to the claim will be granted on the basis of a record
21 that has been established solely with respect to the notes that
22 are not structured notes. And there'll be a follow-up order
23 with respect to the structured note component of the objection
24 subsequent to the filing of a supplemental declaration
25 concerning the notice to noteholders with respect to this

1 question. And it will be heard on December 21 presumably as an
2 uncontested matter.

3 MR. BERNSTEIN: Thank you, Your Honor. That will make
4 sense and we will take the appropriate actions.

5 THE COURT: Okay.

6 MR. BERNSTEIN: With that, I will turn the podium over
7 to Erin Eckols to handle the contested portion of the agenda.

8 THE COURT: Okay.

9 MR. BERNSTEIN: Thank you.

10 MS. ECKOLS: Your Honor, Erin Eckols with the debtors.
11 I will be handling contested agenda items 11, 12 and 13 which
12 are carryover claims from omnis 92, 120 and 170. As all three
13 items present the same issue, I propose to handle them
14 together, if that is acceptable to Your Honor.

15 THE COURT: That's fine.

16 MS. ECKOLS: The debtors' 92nd, 120th and 170th
17 omnibus objections all seek to disallow and expunge claims for
18 failure to obtain a blocking number in violation of this
19 Court's bar date order. Today we are proceeding as to the ten
20 claims set forth on Exhibit A to the omnibus reply filed by the
21 debtors at docket entry 22677.

22 The basis for the omnibus objections is
23 straightforward. The bar date order required claimants seeking
24 to recover for Lehman program securities to obtain a blocking
25 number. It is undisputed that the ten claims at issue are

1 seeking to recover for Lehman program securities and that the
2 claimants did not obtain a blocking number. Accordingly, these
3 ten claims do not comply with the critical component of the bar
4 date order, the blocking number requirement, and should be
5 disallowed.

6 The debtors' position is set forth at length in the
7 omnibus objections and the omnibus reply. And I will not
8 repeat all those arguments but instead touch on a few key
9 points that go directly to the crux of the matter.
10 Specifically, the three things I want to discuss are why the
11 blocking number requirement is important and not a mere
12 technicality; that the bar date order did, in fact, require the
13 claimants to obtain a blocking number; and the prejudicial
14 effect of excusing the claimant's violation and allowing them
15 to rely on extrinsic evidence in lieu of a blocking number.

16 The blocking number requirement has been critical to
17 the reconciliation of the Lehman program securities claims.
18 The Lehman program securities procedures were specifically
19 created to address the inherent complexity in reconciling
20 claims based on over 4,000 securities for which there was not
21 an indenture trustee to file on behalf of the tens of thousands
22 of beneficial holders that existed worldwide.

23 The debtors needed a method by which they could
24 validate those claims as the debtors did not know the identity
25 of the beneficial holders, the amounts held and the trading

1 activity for those securities. For example, a security could
2 have been traded every day for the sixty days leading up the
3 securities program bar date. And every single one of those
4 holders could have filed a claim. The request for a blocking
5 number froze trading on that piece of the security through the
6 securities program bar date and allow the debtors to confirm
7 that the party filing the claim actually held the security and
8 in what amount.

9 In my example, the blocking number would prevent the
10 debtors from making duplicative payments on all sixty claims
11 filed as opposed to on the one claim by the actual holder of
12 the security on the bar date.

13 The Lehman program securities procedures, and more
14 specifically the blocking number requirement, is the method the
15 Court ordered that claimants follow in order to prevent invalid
16 or potentially duplicative distributions. It is a requirement
17 imposed for Lehman program securities claims due to the unique
18 circumstances of these cases and these securities. It is not a
19 mere technicality but an essential component of the Lehman
20 program security procedures.

21 The bar date order, as such, required Lehman program
22 securities claimants, regardless of whether or not they had
23 previously filed claims, to obtain a blocking number. The
24 claimants contend that they are exempted from obtaining a
25 blocking number because they submitted claims prior to entry of

1 the bar date order. In doing so, they rely on a strained
2 interpretation of the bar date order that ignores the most
3 relevant language on that issue. The most relevant language
4 being the bar date order's expressed statement that the Lehman
5 program securities procedures, of which the blocking number is
6 one, must be followed "notwithstanding anything to the contrary
7 contained in this order".

8 The langu --

9 THE COURT: I'm going to stop you there because I've
10 been spending some time with the objections and the bar date
11 order. And this is an area which I think is less about whether
12 or not there is language that can be interpreted in the manner
13 argued by the debtor in this objection and more a question
14 about whether or not a party who receives the bar date order
15 itself and reviews it reasonably can be confused with respect
16 to what is presented in that notice. And having reviewed the
17 language with reference to the objections, I believe that the
18 debtor has a weak argument with respect to the notwithstanding
19 language. And I think it's particularly weak because a party
20 who has been particularly diligent -- we're talking about a
21 class of creditors here that isn't in the zone of a late filer
22 but rather is in the zone of an early filer of a proof of
23 claim, a creditor that was so concerned about asserting its
24 claims in these cases that it didn't wait for the bar date
25 notice; it filed the proof of claim on a Form 10 or on a form

1 that was equivalent to a Form 10.

2 That being so, and given the fact that the notice
3 makes it clear that unless a party is bringing a claim based
4 upon a derivative or a guaranty claim, there is no obligation
5 to file a proof of claim if one has been previously filed, I
6 have some real concerns about this aspect of your argument
7 which, in effect, goes to a later portion of the bar date order
8 and says that the notwithstanding language trumps everything.
9 That might have been true if the paragraph that dealt with the
10 filing of a proof of claim earlier than the bar date had
11 included in bold language or very, very clear language anybody
12 who has filed a proof of claim with respect to a program
13 security needs to get a blocking number. And you need to, in
14 effect, do this process all over again. And we're sorry about
15 that 'cause it may be an inconvenience but it's important to
16 the debtor. And let's explain why it's important to the debtor
17 so that parties who are retail holders would have some reason
18 to take appropriate action as opposed to be lulled into a sense
19 that we don't have to do anything.

20 So that's my concern with respect to this issue and
21 I'm letting you know it now.

22 MS. ECKOLS: Thank you, Your Honor. In response to
23 that, there are other ways other than the bar date order
24 language where I think you could specifically say that
25 claimants were put on notice that they had to acquire a

1 blocking number. And specifically in the program securities
2 bar date notice, it specifically stated you must obtain a
3 blocking number. And those notices or similar notices were
4 also posted on the Lehman Brothers Treasury trustee's website
5 and the Lehman Brother securities. So in that respect, the
6 language in those notices is certainly clearer than what was in
7 the bar date order.

8 Taken the claimants' interpretation, however, would
9 effectively give the notwithstanding anything to the contrary
10 in this order language no effect. And arguably, the result of
11 this would be that anyone who filed a claim prior to the entry
12 of the bar date order would not have to comply with the Lehman
13 program securities procedures at all. And that was certainly
14 not the intent of the careful negotiation and crafting of those
15 procedures.

16 THE COURT: But it's not clear to me -- and I was
17 around when these procedures were being negotiated but I was
18 not a party to the negotiations. It's not clear to me that
19 much attention was given to parties that had already filed
20 proofs of claim. It was prospective the concern at the time of
21 crafting of the bar date procedures, some of which are unique,
22 and the blocking number provision is one such unique provision,
23 was on a go-forward basis to make sure that parties who are
24 responding to the order did so in compliance with the
25 procedures. And when I have, in the past, made statements

1 either from the bench or in written opinions concerning the
2 importance of the bar date order, it was to maintain the
3 integrity of that order, at least in my mind, prospectively to
4 make sure that people who received notice were being uniformly
5 treated.

6 So I don't know that what you're saying is entirely
7 true in that a party who has filed the proof of claim and can
8 establish through extrinsic evidence that that party would have
9 qualified for a blocking number because that party was, in
10 fact, in possession of the relevant security at times
11 significant to the proof of claim suggests no harm to the
12 debtor. And not meaning to diminish the power of your first
13 argument, it does make the blocking number issue seem to be a
14 mere technicality.

15 MS. ECKOLS: Addressing the kind of no harm no foul
16 point or what's the prejudice to the debtors, allowing the
17 claimants to introduce extrinsic evidence of ownership of the
18 securities does not effectively substitute for a blocking
19 number. And the reason for that is because the blocking number
20 was also designed to prevent the issue of duplication. And if
21 an individual claimant says but, here, I own the security; I
22 didn't get a blocking number but I owned it, I should get it,
23 the risk exists that his claim is actually within a bank or
24 broker or larger claim that one of those institutions filed on
25 behalf of a lot of the holders and their clients where they

1 would get one blocking number for a -- representing multiple
2 holders' positions. They would file that claim. And there's
3 no way for the debtors to know whether or not that individual
4 claimant's position is within that larger claim. So that is
5 why the blocking number requirement and -- is important. And
6 it doesn't -- extrinsic evidence of ownership doesn't cure all
7 the issues or address all the issues that the blocking number
8 requirement was designed to address.

9 THE COURT: But can't the issue that you just
10 described be resolved, with some labor obviously, by performing
11 some diligence to be assured that the security in question is
12 not the subject of some other program security that has been
13 filed? And can't that burden be placed on the claimant if the
14 claimant, in effect, would need to demonstrate it's an
15 independent claim and it's not part of anybody else's claim?
16 And to the extent that there's some need to go to Epiq or to
17 debtors' professionals in order to facilitate the process, it
18 could be a collaborative effort.

19 MS. ECKOLS: Well, one, I do want to point out that
20 the debtors have, I think, exercised extreme diligence in the
21 reconciliation of these particular claims and spent thousands
22 of hours looking into whether certain claimants' claims were
23 covered or could be covered by one of these institutional
24 clients because we did not want to object and disallow
25 someone's claim that actually had a blocking number but it was

1 in someone else's possession. So we did try to make sure we
2 weren't doing that.

3 The issue on some of these is that it's not as simple
4 as pulling all the bank and broker claims and looking at them
5 because the bank and brokers didn't necessarily break out who
6 they were filing on behalf of. If they did and they actually
7 had names and we could match them up, we could match up the
8 blocking number and we would not have objected to those claims.
9 So it is not as easy as it might be --

10 THE COURT: I don't think anything in this process is
11 easy. And don't get me wrong in suggesting that I think it's
12 just a matter of putting together a couple of people in a room
13 and then come out with an agreement. I'm confident that it's
14 harder that. But the blocking number aspect of the bar date
15 order is perhaps the most atypical aspect of any bar date order
16 that certainly I've ever approved. And I suspect it may be the
17 most atypical aspect of any bar date order that has ever been
18 approved. And that's partly due to the nature of the claims
19 that arise out of the Lehman program securities themselves.

20 I know that we've had earlier discussions on the
21 record and I had my memory refreshed by the transcript of the
22 hearing from October of last year when Mr. Waisman was talking
23 about other objections that had been lodged by the debtors to
24 certain claimants that had not obtained blocking numbers. And
25 there's some colloquy relating to the subject. That colloquy

1 illustrates, if anything, the Court's confusion as to the
2 proper role of these blocking numbers in the claims allowance
3 process. And I suppose I don't have much greater clarity today
4 than I had a year ago except I now have by virtue of the papers
5 that have been filed by counsel on behalf of claimants a deeper
6 appreciation of some of the confusing language in the bar date
7 order itself as it relates to proofs of claim that were filed
8 prior to the entry of the bar date order itself and prior to
9 the advent of the blocking number concept. And it's, in part,
10 for that reason, and I'm letting everybody know this because I
11 think I'm fairly transparent on this point, that I am
12 sympathetic to the objections that have been lodged to the
13 debtors' request to disallow these claims particularly as to
14 those claims that were filed early.

15 So I hear your argument but I think that this is an
16 area in which the claimants legitimately can assert confusion
17 based upon the language of the bar date order that requires an
18 experienced lawyer to unravel.

19 MS. ECKOLS: Well, I do think that the securities
20 program bar date notice that was distributed was clearer to the
21 extent the claimants had confusion 'cause it did state
22 specifically you must obtain a blocking number as did the
23 securities program proof of claim.

24 Going to your point about what diligence could be
25 done, at this point, the claimants haven't offered to take the

1 step of working with their bank or broker to confirm that there
2 is not duplication. They've provided -- a lot of them have
3 offered extrinsic evidence of ownership but not taken the
4 additional step of establishing, no, my claim is definitely not
5 included on anyone else's. And absent the blocking number,
6 it's just something the debtors cannot be a hundred percent
7 sure of.

8 THE COURT: Can you explain something to me --

9 MS. ECKOLS: Sure.

10 THE COURT: -- that I don't appreciate? If there is a
11 retail holder of a Lehman program security that's held in an
12 account --

13 MS. ECKOLS: Okay.

14 THE COURT: -- a brokerage account, and there are
15 certain declarations that confirm those including those
16 submitted by Mr. Fox's client -- clients, plural. They say,
17 and I'm just using them as an example, we owned the security
18 before there was a bankruptcy. We owned the security
19 throughout the bankruptcy and never traded it. And we own the
20 security now. And here's a copy of our brokerage statement
21 which lists the security. Just using that as an example, how
22 is it possible for anyone else to have obtained a blocking
23 number relative to that security since there are no indenture
24 trustees here? There are no other parties in a position, as a
25 matter of law, as I understand it, to act in the same role as,

1 say, Wilmington Trust was acting earlier in today's hearing.
2 And the very justification for the Lehman program security
3 protocol was these are securities that were issued without
4 indenture trustees. And so, we need to make sure that the
5 party making the claim isn't constantly trading to somebody
6 else making a claim so that we end up having a mountain of
7 claims relating to the same instrument. I'm just wondering how
8 that issue could come up.

9 MS. ECKOLS: Right. Well, we have encountered several
10 instances where banks and brokers actually filed claims on
11 behalf of their clients and just didn't tell them. So whatever
12 the reason for that, we know it did actually in fact happen.

13 THE COURT: So how would a blocking number protect? I
14 mean, this is the sort of thing that can happen in any
15 circumstance where there are duplicate claims?

16 MS. ECKOLS: Well, the broker could have obtained the
17 blocking number on their own or maybe the broker, if they held
18 the securities in a different name -- the problem is, we just
19 can't -- we just can't a hundred percent, sure, say that there
20 isn't any duplication.

21 Now the risk -- let's say there's a spectrum between
22 zero and a hundred percent of the risk of duplication and the
23 debtors cannot a hundred percent eliminate the risk of
24 duplication but there is a spectrum. And it would be
25 dependent on each of the particular securities at issue and how

1 much was outstanding and how much blocked where you would end
2 up on, well, gee, we have a low risk of duplication, we have a
3 medium risk of duplication or we have a high risk of
4 duplication because of the lack of a blocking number. So the
5 risk is going to be there just by the simple fact that these
6 claimants did not comply.

7 THE COURT: Well, I understand that there's -- I hear
8 your argument and I understand that there is a risk that cannot
9 be reduced to absolute zero. But it doesn't seem to me that
10 it's a risk that can't be accommodated through diligence. Some
11 of these claimants are from Mexico. Some of these claimants
12 are from Australia. I'm not trying to limit the globe to those
13 countries but those are claimants whose papers I recall
14 reviewing. And I recall, as I was reviewing them, thinking not
15 only is the notion of the blocking number for purposes of
16 Lehman program securities a complicated additional feature for
17 someone who is in the United States and in a position to do
18 diligence with respect to the steps that must be followed to
19 preserve a claim, but for someone in western Australia or for
20 someone in Mexico, particularly where there's some language
21 issues that may be involved, it seems to me that the confusion
22 feature of this moves higher up the scale.

23 So I hear all that you're saying. And I'm going to
24 hear from the other parties if they wish to be heard on this.
25 Based upon my review just of the papers, I believe that the

1 strict application of the no blocking number objection to
2 parties that filed their proofs of claim prior to the issuance
3 of the bar date order itself that including the blocking number
4 requirement should be excluded from that requirement if those
5 claimants have the capacity to demonstrate through acceptable
6 proof that they continue to hold the securities at issue and
7 would have qualified for a blocking number had they applied for
8 a blocking number by the bar date in effect making this a no
9 harm no foul. But I also recognize that this imposes
10 potentially some incremental administrative burden on the
11 estate to confirm that that party is not double dipping or
12 triple dipping. And I don't know how hard that is. But it
13 seems to me that it should be relatively straightforward. We
14 know who the broker is or who the broker is claimed to be that
15 has possession of the relevant security. And it should be
16 possible to track whether or not A and Z Bank or a Mexican
17 broker-dealer obtained a blocking number. Find out all the
18 blocking numbers obtained by that entity. Do any of those
19 blocking numbers relate to the security? If the answer is no,
20 there's no duplication. If the answer is yes, there may be
21 duplication. I don't know. It seems to me that it can be
22 done.

23 MS. ECKOLS: Well, from the debtors' perspective, it
24 was certainly not the intent that the Lehman program securities
25 procedures would -- or that the people who filed claims prior

1 to entry of the bar date order would be exempted from the
2 Lehman program securities procedures.

3 THE COURT: I totally understand that. And I'm not
4 suggesting by what I've just said that I have just eviscerated
5 an important feature of the bar date order. I'm merely saying
6 that those parties who are in court and have objected to the
7 application of the blocking number requirement to their claims
8 and who can demonstrate that they hold the securities, would
9 have qualified for a blocking number and was justifiably
10 confused as to the language of the bar date order have
11 qualified for this exemption that's personal to them because
12 they've demonstrated that, as to them, this is something that
13 provided enough confusion including, in certain instances,
14 telephone calls to Epiq confirming that their claim was filed
15 and they assumed, rightly or wrongly, I don't have to do
16 anything more. And the language of the bar date order that is,
17 in retrospect, imperfect with respect to notifying those
18 parties that have already filed claims based on program
19 securities that they need to do more because a fair reading of
20 at least one of the paragraphs tells people who have already
21 filed proofs of claim that they don't have to do anything
22 unless they have claims based on derivatives or guaranties.

23 MS. ECKOLS: That approach does raise the question of
24 what would be deemed acceptable proof and does open the door to
25 certain evidentiary issues that -- and additional burdens in

1 the claims reconciliation process. And there's always the risk
2 of more people coming forward and raising this issue and saying
3 me, too; me, too.

4 THE COURT: I think that's okay because what we're
5 engaged in here is a balancing of the integrity of the claims
6 process, on the one hand, and the rights of individual
7 claimants, on the other. And in fairness, the rights of
8 individual claimants should trump administrative convenience.

9 MS. ECKOLS: Understood. I think that the debtors'
10 position is that the blocking number requirement is something
11 more than an administrative convenience.

12 Unless Your Honor has any other questions, I'm going
13 to turn the podium over to whoever would like to speak next.

14 THE COURT: Okay.

15 MR. FOX: Your Honor, may I be heard?

16 THE COURT: Sure. Mr. Etkin, you walked in the room
17 and you're leaving. Were you just here to observe?

18 MR. ETKIN: A little confusion, Your Honor.

19 THE COURT: Did you think this was the confirmation
20 hearing?

21 MR. ETKIN: Yeah. My watch was a week off. I think
22 something with the agenda, Your Honor, which I'll have to clear
23 up.

24 THE COURT: All right.

25 MR. ETKIN: Thank you for noticing me.

1 MR. FOX: Good morning, Your Honor. Joseph Fox. I
2 represent two creditors, Procesos Controlodas, on objection
3 number 92, and Jose Ildefonso and Mariana Aldaco on objection
4 170. And, Your Honor, to follow up on some of the comments and
5 questions that the Court had, the process under which this
6 provision was presented to the Court was not in the original
7 application and, as the Court indicated and reflected on, was
8 between a discussion among the debtor, the creditors' committee
9 and some others.

10 In this case in particular, these were specially
11 prepared securities designated for one particular broker-
12 dealer. The prospect of being able to determine who the
13 holders -- and there were approximately seventy-five of them --
14 who the holders are, it was very simple. Go to the broker-
15 dealer. They have -- it was tailored for them. It is theirs.
16 They can detail it. And in fact, in these two cases, we were
17 able to follow and trace those claims and present proof to the
18 Court the idea that they need to -- that there's a mountain
19 that's just unimaginable to overcome here is -- I know from the
20 case -- from my client's case is just not relevant. We have
21 presented to the Court, as the Court had indicated, proof of
22 the holdings continuously.

23 What the debtor is proposing to do here is really to
24 abrogate the rights of a creditor in its regular claims
25 process, which is what goes on in bankruptcy cases all the

1 time; claims determination is what the Court does. And what
2 happened here, an objection was made and a proof of claim is
3 prima facie proof of the claim itself. An objection is made.
4 And the claimant then -- if it's an appropriate objection, if
5 it rises to the level of calling it into question, the claimant
6 then has a right to prove its claim or has the burden of
7 proving its claim.

8 The proposal here by the debtor is to really abrogate
9 that right, to say if this wasn't done, you can't prove your
10 claim. And that conflicts with Section 502(b) and with
11 Bankruptcy Rule 3001. That's unfair. I think certainly in
12 this case and the papers that are presented in opposition to
13 the debtors' motion I think bear out a lot of other arguments
14 with respect to the propriety of this provision and whether it
15 can or can't have been made -- or couldn't have been made
16 previously. I'll rest on the papers that were submitted.

17 But here, these claimants did everything that they
18 were supposed to do. I filed these proofs of claim in February
19 fearful that -- not to miss a bar date, do it timely, put the
20 debtor on notice. Nothing behind this other than try to comply
21 in all promptness with the process that was going on. Indeed,
22 when the bar date order came out, I called Epiq. And I
23 presented that question and I was told at that time that
24 another proof of claim wasn't required. I don't have
25 documentation; I don't have an e-mail. But it was confusing.

1 I called Epiq and Epiq told me that a claim wasn't required.
2 And we didn't at that time amend the claims. Later on, we did
3 amend the claims. The underwriter did get blocking numbers, a
4 few of them. There was some confusion. But that was the case
5 here where we tried as much as we could to follow the rules and
6 comply with the Court and with the process here.

7 I think that --

8 THE COURT: Let me break in and ask you a question
9 because you said in certain instances, if I heard you right,
10 you said underwriters obtained blocking numbers. I don't know
11 what you mean.

12 MR. FOX: Well, as I understand it -- and I'm not a
13 securities person; I do bankruptcy work. When -- there were
14 underwriters who obtained blocking numbers for various holders.
15 They did that -- they did that.

16 THE COURT: I don't know what you mean when you -- I
17 don't understand you.

18 MR. FOX: The under -- as I understand it, the
19 underwriter, if -- I'm not exactly sure how these things are
20 held, but blocking numbers had been obtained in some cases.

21 THE COURT: Blocking numbers had been obtained in some
22 cases with reference to your clients?

23 MR. FOX: To some of them. I believe to some of them,
24 yeah.

25 THE COURT: Well, but you're saying supports the

1 debtors' argument that there's the potential here for exactly
2 what the blocking number --

3 MR. FOX: No.

4 THE COURT: -- is designed to avoid.

5 MR. FOX: Your Honor --

6 THE COURT: You're filing --

7 MR. FOX: No. The --

8 THE COURT: You're filing an objection to something
9 that may already be the subject of somebody else's claim.

10 MR. FOX: No, no. That is impossible. That did not
11 happen. There was no blocking number obtained for -- these
12 securities were held by these debtors -- by these claimants
13 from the beginning until the end. And there were no other
14 blocking numbers. There's no allegation by the debtor that
15 there was another blocking number, that there's another holder.
16 We provided proof that these claimants have held these claims
17 throughout. And these are the ones that are before the Court
18 today and these are the ones that have been proven are holders
19 of these claims. And they were and they are.

20 THE COURT: Okay.

21 MR. FOX: Thank you.

22 MR. CAHN: Good morning, Your Honor. Aaron Cahn,
23 Carter Ledyard & Milburn for the Punjab National Bank. Your
24 Honor, a lot of what I was planning to say in response to the
25 response that we received a couple of days ago has been covered

1 in your colloquy with Ms. Eckols so I won't repeat it. I just
2 wanted to note a couple of quick points.

3 As we noted in our response to the initial objection,
4 that there was confusion is, I think, manifest by the fact that
5 there were literally hundreds of these claims which were
6 subject of even just the 92nd objection which is the one our
7 claim is contained in. I haven't counted the numbers in the
8 other objections. So clearly, there was a certain level of
9 confusion among parties of all different shapes and sizes, if
10 you will, as to what they needed to do or didn't do.

11 And by the same token, the universe of parties that
12 responded to the claims objections is quite small. I mean,
13 there are, I think, five, six or seven claims that are in
14 today's hearing from the 92nd objection. And there are another
15 number that have been adjourned to -- I believe it's the 21st
16 of December. I don't recall how many those were but it's a
17 very, very tiny fraction of the actual number of claims that
18 have been objected to. So -- and, of course, the ones that did
19 not respond have long since been dispatched on Your Honor's
20 uncontested calendar probably back in the spring.

21 So, just in terms of sheer numbers, there's very
22 little, I think, that needs to be done. The debtor will have
23 to deal with a handful of claimants. We are -- we'd certainly
24 confirm with our client that they have never sold or otherwise
25 disposed of the securities. We're prepared to do whatever it

1 takes to make that presentation to the debtor at our expense,
2 of course. And we are also -- I noticed Ms. Eckols mentioned
3 that nobody's offered to go to their broker and confirm that
4 the broker didn't get a blocking number. Well, okay. I mean,
5 that just surfaced today, that argument. And let me state for
6 the record that we are prepared to do that. I make that offer
7 to the Court and to Ms. Eckols.

8 So I think that, as Your Honor suggested, this is a
9 situation which ought to be relatively easily resolvable. And
10 we're prepared to do whatever it takes to resolve it if given
11 the opportunity.

12 THE COURT: Okay.

13 MR. CAHN: Thank you, Your Honor.

14 THE COURT: Is there anyone else --

15 MS. MOYNIHAN (TELEPHONICALLY): Your Honor? Your
16 Honor?

17 THE COURT: There is someone standing at the podium
18 but --

19 MS. MOYNIHAN: No. My apologies.

20 THE COURT: Who do you represent?

21 MS. MOYNIHAN: Your Honor, Kerry Moynihan, Holme
22 Roberts & Owen on behalf of Millennium Marketing and
23 Management. In addition to the comments that have already been
24 made for the Court, I would just like to add that my client has
25 also submitted an affidavit which states that he has been the

1 holder of the security from the beginning of the bankruptcy
2 through after the blocking dates were -- I'm sorry -- the
3 blocking numbers were released. And we also have submitted an
4 affidavit from the broker, which in this case is A&Z, stating
5 they did not obtain a blocking number on behalf of the
6 security.

7 THE COURT: Okay.

8 MS. DICONZA: Your Honor, Maria DiConza from Greenberg
9 Traurig representing Optique Pension Fund Ltd. It's an
10 Australian fund. They're in a similar position that we're
11 talking about, filed a proof of claim before the bar date
12 order, did not obtain a blocking number. I just wanted to
13 point out that their securities which have been held
14 consistently are under their name in the Clearstream system. I
15 believe the blocking number is also associated with the
16 Clearstream system. So it seems that if there's no blocking
17 number associated with the position that's held in the
18 Clearstream system then there couldn't possibly be a
19 duplication situation. And I believe that the representations
20 from A&Z Bank, which are also applicable to my client, would
21 alleviate the debtors' concerns in that regard.

22 MS. MANDEL: Good morning, Your Honor. Lena Mandel,
23 Milbank Tweed Hadley & McCloy on behalf of the committee. We
24 just want to make a general observation that we certainly agree
25 with the Court that as important as the integrity of the bar

1 date process is the substantive rights of individual claimants
2 are also important and certainly trump the administrative
3 convenience of the debtor. So it does not appear to the
4 committee that to the extent that individual claimants who have
5 taken the time and the effort to respond to those objections
6 can, in fact, bear their burden of proof that they're
7 non-double dipping and that no other claims have been filed on
8 behalf of the securities, there's no reason why the debtors
9 could not work with these claimants to work through these
10 issues and to establish whether or not these are valid claims.

11 With respect to what kind of evidence would be
12 required, this should probably be determined on a case by case
13 basis to the satisfaction of this Court.

14 THE COURT: Okay. Thank you.

15 MR. SOUTH: Good morning, Your Honor. George South on
16 behalf of Rakepoll Finance N.V. I'm sorry -- DLA Piper.

17 Your Honor, I would just echo sentiments of the Court
18 in the respect that the procedures outlined in the bar date
19 order I think are a little ambiguous and somewhat confusing.
20 As was pointed out by this Court itself during your October
21 27th, 2010 hearing that this claims process is fairly complex
22 and by no means a standard issue.

23 Your Honor, Rakepoll filed a claim on January 9th,
24 2009, well prior to the bar date order being entered and, in
25 good faith, relied on those provisions in that order for the

1 understanding that they would not have to file another amended
2 proof of claim.

3 Your Honor, Rakepoll's claim is based on Lehman
4 program securities and a guaranty. The Lehman program
5 securities that were issued were obligations of Lehman Brothers
6 Securities N.V. and then were guaranteed by LBHI.

7 Your Honor, in addition to the language that you have
8 pointed out on page 4 of the bar date order in that paragraph F
9 about claimants filing a proof of claim previously based upon
10 the proof of claim form that's attached to the bar date order
11 which, Your Honor, is just a regular Form 10, that proof of
12 claim does not include a box for a blocking number or anything
13 like that. That's the proof of claim that's that form. We
14 substantially complied with that form. Rakepoll filed a proof
15 of claim prior to the bar date order complying with that form.

16 When you get to the proviso of that -- that provision
17 which says that if you're filing a claim based on a derivative
18 contract or a guaranty, you have to conform with the procedures
19 set forth for filing proofs of claim based on derivatives and
20 guaranties, that then brings you to paragraph H on page 14 of
21 the order which has language to the effect that if you have a
22 claim based on both a Lehman programs security and any other
23 claim -- in this case, a guaranty claim -- you don't have to
24 file a guaranty unless your claim is based on something other
25 than a Lehman program security. And here, it is based on a

1 Lehman program security. Our guaranty is based on a Lehman
2 program security. So we relied on that provision and paragraph
3 H as well as the paragraph F on page 4 for the notion that we
4 do not have to file an amended proof of claim or the guaranty
5 questionnaire or obtain a blocking number as a result. And,
6 Your Honor, I think that's just another indication of how the
7 order is ambiguous on this point with respect to claims that
8 were filed prior to the bar date.

9 And again, Rakepoll -- we're perfectly fine with
10 getting evidence of the fact that they currently owned the
11 security -- they owned the security prior to the bar date, they
12 owned it at the bar date and they currently own it. And we're
13 prepared to make that evidentiary record, Your Honor. Right
14 now, the debtor, as has been stated -- their sole argument is
15 that these parties did not obtain a blocking number. They
16 haven't contested the claim -- that we hold the claim. They
17 haven't contested the amount of the claim. They haven't asked
18 for any evidence of the claim. So the debtors' suggestion that
19 we haven't provided any -- you know, our proof of claim is
20 prima facie evidence of the validity of our claim. And that
21 should stand unless there's a determination that we need to
22 provide more evidence. Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. BERNSTEIN: Your Honor --

25 THE COURT: Mr. Bernstein, are you responding on

1 behalf of the debtor?

2 THE COURT: Yes, and also to give just some additional
3 information on how the blocking numbers were obtained and the
4 process which I think may be helpful in this conversation.

5 THE COURT: I don't want to in any way cut off your
6 presentation although ordinarily one lawyer will be speaking to
7 a particular issue from any one firm unless there's a
8 particular reason for another lawyer to get up. I'll hear what
9 you have to say but I'm pretty clear what I'm about to do. And
10 it isn't that I don't want to hear what you have to say, but
11 you should know what my inclination is before you say it.

12 I think that those parties who have previously filed
13 proofs of claim that relate to Lehman program securities should
14 confer with authorized representatives of the debtor between
15 now and the December 21 hearing for purposes of answering
16 questions or facilitating the process that we've been talking
17 about throughout the morning. And the questions would be what
18 proof do you have that you hold these securities, what proof do
19 you have that no one else obtained a blocking number that
20 relates to these securities and what issues exist that might
21 impede allowance of the claim as filed. And that the parties
22 informally should endeavor to resolve those issues that can be
23 resolved by agreement. And to the extent that there are
24 ongoing and legitimate concerns that the debtors have as to
25 particular claims including those of the claimants who are

1 represented here today or on the telephone that we can deal
2 with those at a future hearing. But I'm not going to grant any
3 relief today. And I think I've already fairly clearly
4 indicated that I'm not likely to grant such relief unless it
5 can be demonstrated that there is a meaningful risk of double
6 counting.

7 MR. BERNSTEIN: Sure. Understood. And that's
8 somewhat --

9 THE COURT: Now if you want to say something, go right
10 ahead.

11 MR. BERNSTEIN: No. That mostly makes what I was
12 about to say unnecessary. And we will deal with the issues I
13 was going to raise with the blocking numbers and why we need
14 them and how they were obtained with the individual complaints.
15 And to the extent that we're unable to reconcile or come to an
16 agreement or get comfortable that there is no additional risk
17 then we just obviously reserve our rights to come back before
18 Your Honor.

19 THE COURT: That's fine. And this can be carried
20 until the December 21 hearing or, if more time is needed, to a
21 subsequent hearing.

22 MR. BERNSTEIN: Absolutely. So with that, that
23 concludes the agenda for the day.

24 THE COURT: Fine. We are then adjourned.

25 MR. BERNSTEIN: Thank you, Your Honor.

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THE COURT: Thank you.

(Whereupon these proceedings were concluded at 11:33 a.m.)

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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' 186th omnibus objection to claims sustained on an uncontested basis	12	7
Debtors' 187th omnibus objection to claims sustained on an uncontested basis	12	7
Debtors' 184th omnibus objection to claims sustained based on representations made on the record	13	19
Debtors' 213th, 214th, 215th and 216th omnibus objections to claims sustained based on statements made by counsel and incorporated into the record	17	12
Debtors' 217th omnibus objection to claims sustained on an uncontested basis	18	10
Debtors' 218th omnibus objection to claims sustained	19	5
Debtors' objection to Wilmington Trust's claim granted on the basis of a record established solely with respect to the notes that are not structured notes	36	22

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
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 Lisa Bar-Leib

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